IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 12564 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANOJBHAI KANJIBHAI PATEL & 4 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR AD SHAH for Applicant(s) : 1 - 5.
MR HL JANI for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/10/2005

ORAL JUDGMENT

1.Rule. Mr. H.L. Jani, the learned Assistant Public Prosecutor waives service of rule on behalf of respondent no.1 State and Ms. Kruti M Shah, the learned advocate who

files appearance on behalf of the respondent no.2/original complainant waives service of rule on behalf of respondent no.2. The respondent no.2 is personally present before the court.

2.The petitioners/original accused no. 2,4,5 and 6 have filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the order of the learned Chief Judicial Magistrate, Surat in inquiry no.30/2004 directing the Police Inspector, DCB Police Station to investigate the said complaint under Section 156(3) of the Criminal Procedure Code on 21.07.2004.

3.It is the case of the petitioners that on 23.03.1994 an irrevocable Power of Attorney was executed in favour of the petitioner no.1. Thereafter, registered sale deeds were executed on 14.12.2000 by Power of Attorney holder in favour of the accused persons. The present respondent no.2/original complainant has come to know on 02.07.2003 that five sale deeds have been executed on 14.12.2000. The respondent no.2 thereafter filed complaint before the Police Inspector, Umra Police Station and also gave application to Police Commissioner, Surat. On 19.12.2003

the Police Commissioner, Surat informed about the dispute being of civil nature and hence the complainant was directed to obtain appropriate relief from Civil Court. Respondent no.2 therefore filed complaint before the Court of Chief Judicial Magistrate, Surat on 24.03.2004. The learned Chief Judicial Magistrate kept the complaint for hearing on 02.04.2004 and thereafter on 21.07.2004 the Chief Judicial Magistrate after hearing the complainant directed the investigation under Section 156(3) of the Criminal Procedure Code to the Police Inspector, DCB Police Station. Pursuant thereto the accused persons executed five different deeds of cancellation whereby the five registered sale deeds executed on 14.12.2000 were cancelled. All these five cancellation deeds are placed on record.

4.Mr. A.D. Shah, the learned advocate appearing for the petitioners submits that the dispute has been settled between the parties amicably and hence there is no question of any criminal investigation in the matter. He has submitted that even the Power of Attorney which was originally granted in favour of the present petitioner no.1 was also revoked.

5.Ms. Kruti M Shah, the learned advocate who has filed

her appearance today on behalf of respondent no.2 has submitted that respondent no.2 is personally present in the court and she has identified him. She has ascertained from the respondent no.2 that a settlement was arrived at between the parties. An affidavit was filed by the respondent no.2 in which it was stated that the parties have now settled all their disputes relating to the land in question situated at the Sim of Vesu Village, Sub-District Choryasi at Surat bearing Revenue Survey No. 596-II, Block No.393. It is further stated in the said affidavit that the Power of Attorney dated 23.03.1994 in favour of Manojbhai Kanjibhai Patel has been cancelled and he has executed necessary writing in respect to the said irrevocable Power of Attorney. It is further stated in the said affidavit that the registered sale deeds dated 14.12.2004 in favour of other petitioners-accused, namely, Accused Nos. 2 to 6(Accused No.3 had already died) and they have also executed necessary documents cancelling their claim against the complainant based on those sale deeds. It is further stated in the said affidavit that the accused as well as others who were referring to their claim over this land in view of Satakhat/Agreement of Sale executed by the complainant in their favour on 12.05.2003 have also

surrendered their claims. It is therefore stated that the grievances of the complainant in respect to the said land in question have been completely resolved and the parties have compounded all the disputes in respect of which the criminal complaint was filed by the complainant and was registered as M.Case No.4 at DCB Police Station. It was therefore submitted in the said affidavit that since the dispute between the parties having been amicably settled, the complainant is not desirous of pursuing further process of investigation of M.Case No.4/2004 pending before the DCB Police Station, Surat and requested this court to exercise its power under Section 482 of the Code of Criminal Procedure by quashing and setting aside the complaint and the process of investigation in pursuance to the said complaint for securing the ends of justice.

6.After having heard the learned advocate appearing for the respective parties and after having gone through the documents produced before this court as well as the affidavit of the respondent no.2/original complainant, the court is of the view that since the dispute has been amicably settled between the parties, there is no need to carry out any further investigation in the matter. It is

a settled legal position and this court as well as the Hon'ble Supreme Court has taken the view that if a dispute is of civil nature which has been compounded, the court should exercise its power under Section 482 of the Criminal Procedure Code and quash the complaint.

7.In the above view of the matter, this petition is allowed. The order passed by the learned Chief Judicial Magistrate, Surat in inquiry no.30/2004 directing the Police Inspector, DCB Police Station to investigate the said complaint under Section 156(3) of the Criminal Procedure Code is hereby quashed and set aside. Further process of investigation of M.Case No.4 registered at DCB Police Station is also quashed and set aside.

8.This petition is accordingly allowed. Rule made absolute. No order as to cost. Direct Service permitted.

(K.A. PUJ, J.)

Divya//